

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

January 29, 1998

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**No. 97-2563**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**VILLAGE OF LAKE DELTON,**

**PLAINTIFF-RESPONDENT,**

**v.**

**MARK D. ANDERSON,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Sauk County:  
PATRICK J. TAGGART, Judge. *Affirmed.*

ROGGENSACK, J.<sup>1</sup> Mark Anderson appeals his conviction of violating a municipal ordinance in accordance with § 346.63(1)(a), STATS., by operating a motor vehicle while intoxicated (OMVWI). He claims his motion to suppress chemical evidence of his intoxication was improperly denied. However,

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<sup>1</sup> This appeal is decided by one judge pursuant to § 752.31(2)(c), STATS.

we conclude that the record supports the circuit court's decision and affirm the conviction.

## **BACKGROUND**

Village of Lake Delton police officer, Fred Steinhorst, pulled Anderson over for speeding at about 12:35 a.m. on February 22, 1996. Upon noticing the odor of intoxicants, he asked Anderson to perform field sobriety tests. State Trooper Asp happened upon the traffic stop, and he also observed the sobriety tests. As a result of Anderson's performance on the tests,<sup>2</sup> Steinhorst issued Anderson an OMVWI citation, as well as a speeding ticket. The officers then escorted him to the Wisconsin Dells Police Department to perform an intoxilyzer test, which showed an alcohol concentration of 0.12, whereupon Steinhorst cited Anderson for driving with a prohibited alcohol concentration (PAC).

Anderson challenged the citations and moved to suppress the results of the intoxilyzer test. As grounds, he argues that he requested, but did not receive, an alternate chemical test, and that the arresting officer had failed to read him Section B of the Informing the Accused form. He contends Section B was applicable because he held a commercial driver's license. At a hearing on the suppression motion, Anderson testified that when he asked Steinhorst whether he should have a blood test, the officer had responded that it was unnecessary because the blood tests usually come out higher anyway. Steinhorst testified that he did not recall Anderson ever requesting an alternate test, and that he had checked off each and every paragraph of the Informing the Accused form as he

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<sup>2</sup> Anderson does not contest the existence of probable cause for his arrest.

read it to Anderson, as was his custom. Asp also testified that he had not heard Anderson request an alternate test. Considering the conflicting evidence, the circuit court found that Anderson had not requested an alternate test and that he had been read Section B of the form. Based on those findings, it denied the motion to suppress. Anderson then pled no contest to the OMVWI violation and the PAC and speeding violations were dismissed.

## DISCUSSION

### **Standard of Review.**

When we review the denial of a motion to suppress evidence, the circuit court's findings of fact will be upheld unless they are clearly erroneous. Section 805.17(2), STATS.; *State v. Eckert*, 203 Wis.2d 497, 518, 553 N.W.2d 539, 547 (Ct. App. 1996).

### **Suppression Motion.**

Anderson complains that the circuit court erroneously exercised its discretion when it denied his motion to suppress without rationally explaining its statement that, "considering the evidence, the Defendant did not request an alternate test." Anderson attempts to characterize this statement as a "finding that mixes fact and legal conclusion," thus subject to the requirement that the court's reasoning process be displayed on the record. However, we see absolutely no legal conclusion inherent in the factual finding that Anderson never actually requested an alternate chemical test. Either he did or he didn't, and the circuit court was in the best position to judge the credibility of the conflicting testimony on that point. *State v. Angiolo*, 186 Wis.2d 488, 495-96, 520 N.W.2d 923, 927

(Ct. App. 1994). The circuit court's determination was directly supported by Steinhorst's testimony and was not clearly erroneous.

### CONCLUSION

The circuit court's finding of fact is not clearly erroneous. The motion to suppress was properly denied.

*By the Court.*—Judgment affirmed.

This opinion will not be published. See RULE 809.23(1)(b)4.,  
STATS.

